

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re D.T., a Person Coming Under the  
Juvenile Court Law.

B213839  
(Los Angeles County  
Super. Ct. No. CK61830)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,  
v.

DONNA. T.,

Defendant and Appellant;

D.T. et al.,

Minors and Appellants.

APPEALS from an order of the Superior Court of Los Angeles County.

S. Patricia Spear, Judge. Affirmed.

Ernesto Paz Rey, under appointment by the Court of Appeal, for Defendant and Appellant Donna T.

Catherine C. Czar, under appointment by the Court of Appeal, for Minors and Appellants.

Office of County Counsel, James M. Owens, Assistant County Counsel, Navid Nakhjavani, Associate County Counsel, for Plaintiff and Respondent.

In this dependency matter, mother Donna T. appeals the order terminating parental rights to her 12-year-old son D.T., born with Down's Syndrome. Mother challenges the order and argues for the application of the sibling bond exception (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(v))<sup>1</sup> and the beneficial parental relationship exception (§ 366.26, subd. (c)(1)(B)(i)) to the termination of parental rights. The child's five siblings<sup>2</sup> also argue on appeal, as they did through counsel at the section 366.26 hearing, that the sibling bond exception applies.<sup>3</sup>

We hold that substantial evidence supports the juvenile court's finding the child did not have a sufficiently beneficial sibling relationship and, in any event, adoption by the foster mother who was willing to continue sibling contact after adoption was in the best interests of this child. Also, substantial evidence supports the court's rejection of the parental benefit exception because mother, who has six other children, failed to maintain

---

<sup>1</sup> Unless otherwise indicated, all statutory references are to the Welfare and Institutions Code.

<sup>2</sup> A sixth sibling is under the jurisdiction of the delinquency court (§ 602) and is not a party to this appeal. Also, the child's father is not a party to this appeal.

<sup>3</sup> Because we address mother's identical claim of the sibling bond exception, it is unnecessary to request briefing and resolve whether the siblings have standing to raise this issue. Our Supreme Court has specifically avoided deciding whether a sibling has standing to raise the sibling bond exception to the termination of parental rights. (*In re Celine R.* (2003) 31 Cal.4th 45, 52, fn. 2.)

We note, however, that the siblings herein did not file the requisite petition seeking recognition of a sibling relationship (§ 388, subds. (c), (d)) and the right to appear at a hearing, which would have given the siblings standing both in the juvenile court and on appeal to assert the sibling relationship exception. (See *In re Hector A.* (2005) 125 Cal.App.4th 783, 793-794.) The appearance of the siblings through counsel at the section 366.26 hearing, as occurred here, is not dispositive of the standing issue. (Cf. *Clifford S. v. Superior Court* (1995) 38 Cal.App.4th 747, 755 [dependency court gave step-father reunification services even though he had no right to them; nonetheless, he lacked standing to appeal the adequacy of reunification services].) Significantly, although the termination of parental rights of course may affect personal relationships between siblings, it does not sever the legal relationship between siblings. (*In re Miguel A.* (2007) 156 Cal.App.4th 389, 394.)

regular visitation with the child, which is a necessary prerequisite for this statutory exception to apply. We thus affirm the order terminating parental rights.

### **FACTUAL AND PROCEDURAL SUMMARY**

This dependency proceeding was initiated on September 4, 2005, in San Bernardino County, when then eight-year-old D.T. was left alone at a public pool in a park. After the park had closed for the afternoon, a park employee found D.T. in the pool by himself. When police officers arrived on the scene, they discovered that D.T. had Down's Syndrome, was incontinent, nonverbal, and could not provide the officers with any pertinent information. When mother arrived, she appeared to be under the influence of a controlled substance. Later, while waiting at the police station for a representative from the Department of Children and Family Services (DCFS), mother passed out. She was arrested for child endangerment.

On September 28, 2005, dependency petitions were filed on behalf of D.T. and his siblings. The petition filed as to D.T. alleged that mother had a substance abuse problem that negatively affected her ability to parent, and that she had left D.T., who has Down's Syndrome and was unable to communicate, unattended at public pool for an extended period of time. Additionally, the petition alleged that father had an extensive criminal history that negatively affected his ability to parent, and that he had failed to ensure his son's safety and to carry out his other parental obligations. D.T. and his siblings were removed from mother's custody. D.T. was placed with a nonrelative foster mother, who eventually became his prospective adoptive mother. Although D.T.'s siblings were returned to mother, who engaged in some drug rehabilitation efforts, the children were again removed from mother in May of 2008, after she had a drug relapse and tested positive for amphetamines and methamphetamine.

Almost three years after the dependency petition was filed, mother admitted she was not prepared to have D.T. returned to her custody and believed that having him back in her care would be "overwhelming." Additionally, because mother had enrolled in a drug rehabilitation program in the summer of 2008, she had been unable to visit with D.T. The child's siblings also were not visiting with D.T. regularly in 2008. Mother and

the father of one of her other children were involved in a physical altercation resulting in the intervention of the Sheriff's Department and a section 342 petition filed on behalf of D.T.'s sibling, who had been in mother's custody. DCFS believed there was a high risk of abuse or neglect if the children were returned to mother.

Meanwhile, in May of 2008, DCFS recommended terminating family reunification services as to D.T. and setting the matter for a section 366.26 hearing. Mother failed to show up for the hearing and had not been cooperating with DCFS. Mother's counsel suspected that she might have been in custody in San Bernardino County. D.T.'s counsel stated the child was in an adoptive home with a foster mother, and that the home study would likely find the home suitable for D.T.'s adoption. Mother already had been provided with 31 months of reunification services. The court set the matter for a section 366.26 hearing.

On July 25, 2008, the juvenile court sustained an amended petition and terminated reunification services. The court noted that it had previously terminated reunification services as to a sibling and that mother had not subsequently made efforts to treat the problems that led to the removal of that sibling. Also, mother had almost three years of combined reunification services and family maintenance services as to her children, and mother still had a substance abuse problem.

DCFS's September 26, 2008, section 366.26 report indicated the D.T. was continuing to do well in the foster mother's home, where he had been living since September of 2005. D.T. was comfortable in the home and showed no signs of distress or concern. D.T. and the foster mother had a strong bond, and it was deemed very likely that he would be adopted. The home study was projected to be completed by October 15, 2008.

Mother and D.T.'s siblings had not visited D.T. since December of 2007. D.T. had not received regular telephone calls from them and did not enjoy speaking on the telephone because of his disability. Additionally, mother and the foster mother had become well-acquainted over the years, and they had discussed mother's continuing

presence in D.T.'s life. Mother acknowledged that she was not capable of caring for a special needs child.

On November 21, 2008, DCFS advised the court that its recommendation for D.T. was adoption and long-term placement for his siblings. DCFS's report noted that the children had not had any contact with mother during the last reporting period. The court continued the matter for a contested section 366.26 hearing as to D.T.

On January 29, 2009, at the contested section 366.26 hearing, D.T.'s sister, J.T., testified. J.T. acknowledged that it had been three years since she had lived with D.T. She asserted that she did not want D.T. to be adopted and explained that adoption to her is "somebody is taking him away" from her. J.T. stated that she saw D.T. during Christmas vacation in 2007 and possibly again in April of 2008, and that she spoke with him three or four times in 2008. J.T. admitted that the foster mother had never discouraged her from visiting, always allowed her to speak with D.T. when she called, and did not interfere with visits. She also described the foster mother's home as "a nice home."<sup>4</sup>

Mother also testified at the hearing and acknowledged that the last time she had seen D.T. was in June or July of 2008. Mother stated that during visits with D.T. she would help him use the bathroom, give him a bath, and cut his hair if needed. Although mother had not visited him in approximately seven months, she stated that she did call him on the telephone on a weekly basis. However, those telephone calls were usually brief because D.T. did not like talking on the telephone. According to mother, D.T.'s siblings would help her with him. She asserted she had been unable to see D.T. because she was enrolled in a rehabilitation program that did not allow her to leave. After she was released from the program in November of 2008, however, she did not visit D.T. because she did not have enough money for the transportation costs.

---

<sup>4</sup> The parties stipulated that if the other siblings were called to testify, their testimony would be the same as J.T.'s testimony. The stipulation was received into evidence on behalf of all the siblings.

Mother acknowledged that she was satisfied with the care D.T. was getting and that she was willing to visit him if he was adopted. Mother had spoken with D.T.'s foster mother about visitation, and had never been denied visitation by the foster mother. Mother had nothing bad to say about her because the foster mother had taken care of D.T. during the three-year period when mother could not care for him.

After mother's testimony, the court received into evidence DCFS's September 26, 2008, section 366.26 report and its November 21, 2008, report regarding all the children. DCFS argued against mother's claim of the beneficial parent-child exception to adoption, noting that mother and J.T. had not visited D.T. in approximately eight months. Also, DCFS urged that there was no concern about any substantial interference with D.T.'s sibling relationships because the foster mother stated she would not interfere with visitation and had not interfered in the past. D.T.'s counsel joined with DCFS in arguing that mother had not maintained regular and consistent visits, that mother did not visit after her release from the rehabilitation program, and that D.T. had bonded with the foster mother after living with her for three and a half years.

Mother's counsel argued that "the last six months aside" she believed mother had maintained regular visitation. Additionally, mother's counsel noted that she did have telephone contact with D.T. Counsel for D.T.'s siblings argued that parental rights should not be terminated, that the children had maintained telephone contact with each other, and that the court should seek a permanent plan other than adoption.

The court found that because the foster mother was agreeable to continued visits by mother and the siblings, there would not be a substantial interference with the familial relationship if parental rights were terminated. The court determined that although D.T. had been in the same home as his siblings for some time and they shared common experiences, it was in D.T.'s best interest to be adopted. Thus, the court found no statutory exception to adoption, found clear and convincing evidence that D.T. was likely to be adopted, and terminated parental rights.

Thereafter, both mother and D.T.'s siblings filed notices of appeal.

## DISCUSSION

**I. Substantial evidence supports the juvenile court's finding that the sibling relationship exception to the termination of parental rights (§ 366.26, subd. (c)(1)(B)(v)) does not apply.**

When a juvenile court reaches the selection and implementation stage of the proceedings (§ 366.26), with a prior determination to end parent-child reunification services, the court must select either adoption, guardianship or long-term foster care. (*In re Teneka W.* (1995) 37 Cal.App.4th 721, 728.) Although adoption requires termination of the natural parent's parental rights (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1420), in selecting among the three plans, the legislative preference is for adoption over guardianship or long-term foster care, since the latter two options are not permanent placements. (*In re Teneka W.*, *supra*, 37 Cal.App.4th at p. 728; see also *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348.) If the child will likely be adopted, "adoption is the preferred permanent plan." (*In re Tabatha G.* (1996) 45 Cal.App.4th 1159, 1164.)

"[C]onsideration of the child's best interests is inherent in the legislative procedure for selecting and implementing a permanent plan." (*In re Tabatha G.*, *supra*, 45 Cal.App.4th at p. 1165.) If a child is likely to be adopted, parental rights must be terminated unless one of several enumerated exceptions applies. (§ 366.26, subd. (c)(1); see *In re Jasmine J.* (1996) 46 Cal.App.4th 1802, 1807.) The so-called sibling relationship exception, which is at issue here, permits an exception to the termination of parental rights when "[t]here would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption." (§ 366.26, subd. (c)(1)(B)(v).)

The burden is on the parent (or sibling, assuming standing) to show that a significant sibling relationship exists and that its severance would be detrimental to the child. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 952.) The existence of a sibling relationship alone is not enough; it must be “sufficiently significant” to cause detriment on termination. (*Ibid.*) Even if the court finds adoption would cause a substantial detriment to the sibling relationship, the court must nonetheless “weigh the child’s best interest in continuing that sibling relationship against the benefit the child would receive by the permanency of adoption.” (*Ibid.*; see also *In re Celine R.*, *supra*, 31 Cal.4th at p. 61.)

Appellate review of a challenge to the juvenile court’s finding of the inapplicability of the above statutory exception is limited to considering whether substantial evidence supports the finding. (*In re Jacob S.* (2002) 104 Cal.App.4th 1011, 1017.) Under that standard, the appellate court cannot reweigh the evidence or substitute its judgment for that of the juvenile court. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.) Rather, the appellate court views the evidence in the light most favorable to the prevailing party and makes every reasonable inference in support of the judgment. (*Ibid.*) We defer to the juvenile court on issues of credibility of the evidence and witness testimony. (*In re Luke M.* (2003) 107 Cal.App.4th 1412, 1427.)

In the present case, substantial evidence supports the juvenile court’s conclusion that the sibling relationship exception to the termination of parental rights did not apply. The record establishes that D.T. and his siblings had been living in different homes since September of 2005, when they were taken into protective custody. J.T. testified that she and her siblings had not visited with D.T. since April of 2008. She also testified that the foster mother never discouraged her from visiting, always allowed her to speak with D.T. when she called, and never interfered with visits.

In view of the lack of visits, the foster mother’s cooperation with visitation, the foster mother’s willingness to allow visits after adoption, and the fact that the siblings already were not living with D.T., the juvenile court’s rejection of the sibling relationship exception is understandable. Also, we note that J.T. apparently did not have an accurate



understanding of adoption. She testified that she did not want her brother to be adopted, and she believed that adoption meant he would be taken away from her. In fact, however, D.T. would continue to live in the same home he had been living in for three years, and even without adoption D.T. would not be living with his siblings.

J.T. and the other siblings no doubt love D.T. However, there is no substantial evidence that the sibling relationship was somehow “so significant that ongoing foster care or another tenuous placement would be better than adoption.” (*In re J.I.* (2003) 108 Cal.App.4th 903, 915.) Terminating parental rights simply did not substantially interfere with the existing sibling relationship and did not outweigh the benefits of adoption for D.T. (See *In re Daniel H.* (2002) 99 Cal.App.4th 804, 813.) Moreover, to the extent J.T. and the other siblings may be adversely impacted, a court “may not prevent a child from being adopted solely because of the effect the adoption may have on a sibling.” (*In re Celine R.*, *supra*, 31 Cal.4th at pp. 49-50.)

Even assuming *arguendo* that terminating parental rights would somehow substantially interfere with the sibling relationship, the court must still balance any emotional or other benefit from ongoing sibling contact against the benefit of legal permanence the child would obtain through adoption. (*In re L.Y.L.*, *supra*, 101 Cal.App.4th at p. 952-953.) Here, D.T.’s best interests weigh heavily in favor of giving him the stability and permanence of a loving adoptive home.

Accordingly, the juvenile court properly found section 366.26, subdivision (c)(1)(B)(v) inapplicable, and the order terminating parental rights and freeing D.T. for adoption by the foster mother is supported by substantial evidence.

**II. Substantial evidence supports the juvenile court’s finding that the parental relationship exception to the termination of parental rights (§ 366.26, subd. (c)(1)(B)(i)) does not apply.**

Mother also contends that the juvenile court should have found that termination would be detrimental to D.T. because mother had “maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) However, the type of parent-child relationship sufficient to

derail the statutory preference for adoption must entail not only “regular visits,” but also contact that continues or develops a significant, positive, emotional attachment from child to parent. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) Such a relationship “arises from day-to-day interaction, companionship and shared experiences” (*ibid.*), and is of more than merely some incidental benefit to the child. (*In re Beatrice M.*, *supra*, 29 Cal.App.4th at p. 1419.)

For this parental relationship exception to apply, the parent must at the outset establish that she has maintained regular visitation with the child. (§ 366.26, subd. (c)(1)(B)(i).) If the parent can show regular visitation, then court determines whether those visits continued the child’s substantial and positive emotional attachment to the parent. (*In re Beatrice M.*, *supra*, 29 Cal.App.4th at p. 1418.)

The juvenile court’s finding that the parent-child relationship exception to the termination of parental rights is not applicable is reviewed on appeal for substantial evidence. (*In re Megan S.* (2002) 104 Cal.App.4th 247, 251.) If upon review of the entire record substantial evidence supports the finding, it must be upheld—even if substantial evidence to the contrary also exists. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.)

In the present case, mother fails to satisfy the initial requirement of regular visitation. DCFS indicated in its report of September of 2008 that mother and the siblings had not visited D.T. since December of 2007. At the section 366.26 hearing, mother testified that she had not visited D.T. in approximately seven months. Mother acknowledged that she had never been denied visits by the foster mother, and she had nothing bad to say about the foster mother, who had taken care of D.T. for approximately three years.

Even if mother had consistently and regularly visited D.T., she still could not carry her burden of establishing that the child would benefit from continued contact with her. (§ 366.26, subd. (c)(1)(B)(i).) To establish the parental benefit exception, the parent “must do more than demonstrate ‘frequent and loving contact[,]’ [citation] an emotional bond with the child, or that parent and child find their visits pleasant. [Citation.] Instead,

the parent must show that he or she occupies a ‘parental role’ in the child’s life.” (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) “[A] child should not be deprived of an adoptive parent when the natural parent had maintained a relationship that may be beneficial to some degree but does not meet the child’s need for a parent.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.) Here, mother’s period of reunification lasted more than three years, after which mother acknowledged she was not capable of caring for a special needs child and not ready to have D.T. home with her. By the time of the section 366.26 hearing, there was no substantial evidence that the situation had changed and no indication that D.T. would benefit from not being adopted.

Accordingly, the trial court properly rejected application of the parental relationship exception and terminated mother’s parental rights, freeing D.T. for adoption by his foster mother.

#### **DISPOSITION**

The order terminating parental rights is affirmed.

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS.**

BOREN, P.J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.